

national defense purposes, by the Department of Defense, as provided in departmental regulations;

(2) Purchases indispensable for national security or for national defense purposes, subject to policies established by the U.S. Trade Representative.

(d) Research and development contracts;

(e) Purchases of items for resale;

(f) Purchases under subpart 8.6, Acquisition from Federal Prison Industries, Inc., and subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled; or

(g) Purchases of products that are excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703 (b); which presently are—

(1) Textiles and apparel articles that are subject to textile agreements;

(2) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for this purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(3) Tuna, prepared or preserved in any manner in airtight containers;

(4) Petroleum, or any product derived from petroleum; and

(5) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column two rates of duty apply.

[60 FR 67516, Dec. 29, 1995]

25.404 [Reserved]

25.405 Procedures.

When the Trade Agreements Act or North American Free Trade Agreement (NAFTA) applies, the following procedures shall be used:

(a) Contracting officers shall comply with the requirements of section 5.203, Publicizing and response time.

(b) Agencies shall not impose technical requirements solely to preclude the acquisition of eligible products.

(c) Offers received in response to solicitations anticipating competitive negotiations shall be opened in the presence of an impartial witness, whose name shall be recorded in the contract file.

(d) Solicitations shall specify that offers involving eligible products from designated, NAFTA, or Caribbean Basin countries shall be submitted in the English language and in U.S. dollars.

(e) Within three days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated or NAFTA countries notice in accordance with 14.409-1 and 15.503. "Day," for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

[48 FR 42278, Sept. 19, 1983, as amended at 51 FR 16803, May 6, 1986; 51 FR 20976, June 10, 1986; 51 FR 30619, Aug. 27, 1986; 52 FR 30076, Aug. 12, 1987; 53 FR 27465, July 20, 1988; 56 FR 15151, Apr. 15, 1991; 59 FR 546, Jan. 5, 1994; 60 FR 34739, July 3, 1995; 60 FR 42657, Aug. 16, 1995; 61 FR 69289, Dec. 31, 1996; 62 FR 51271, Sept. 30, 1997]

25.406—25.407 [Reserved]

25.408 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert—

(1) The provision at 52.225-8, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, in solicitations containing the clause at 52.225-9;

(2) The clause at 52.225-9, Buy American Act—Trade Agreements—Balance of Payments Program, in solicitations and contracts for supplies where the contracting officer has determined that the acquisition is subject to the Trade Agreements Act;

(3) The provision at 52.225-20, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in solicitations containing the clause at 52.225-21. Use the provision with its Alternate I if the acquisition value is between \$25,000 and \$53,150; and

(4) The clause at 52.225-21, Buy American Act—North American Free Trade

Agreement Implementation Act—Balance of Payments Program, in solicitations and contracts for supplies where the contracting officer has determined that the acquisition is not subject to the Trade Agreements Act but is subject to NAFTA. Use the clause with its Alternate I if the acquisition value is between \$25,000 and \$53,150.

(b) The contracting officer shall rely on the offeror's certification as submitted.

(c) The clause prescriptions at paragraph (a) of this section shall apply where any item under a multiple item solicitation is determined to be subject to the Trade Agreements Act or North American Free Trade Agreement Implementation Act. If the Acts do not apply to all of the items being solicited, the contracting officer shall indicate, in the schedule, those items that are exempt.

(d) The contracting officer shall insert the provisions at 52.214–34, Submission of Offers in the English Language, and 52.214–35, Submission of Offers in U.S. Currency, in all solicitations subject to the Trade Agreements Act or NAFTA.

[48 FR 42278, Sept. 19, 1983, as amended at 56 FR 15151, Apr. 15, 1991. Redesignated at 58 FR 31142, May 28, 1993, as amended at 59 FR 547, Jan. 5, 1994; 60 FR 67517, Dec. 29, 1995; 61 FR 31647, June 20, 1996; 62 FR 261, Jan. 2, 1997; 63 FR 34076, June 22, 1998]

Subpart 25.5—Use of Foreign Currency

25.501 Policy.

(a) Unless a specific currency is required by international agreement or by the Trade Agreements Act (see 25.405(d)), contracting officers shall determine whether solicitations for contracts to be entered into and performed outside the United States will require submission of offers either in U.S. currency or in a specified foreign currency. In unusual circumstances, the contracting officer may permit submission of offers in other than a specified currency.

(b) To ensure a fair evaluation of offers, solicitations should generally require all offers to be priced in the same currency. However, if submission of offers in other than a specified currency

is permitted, the contracting officer shall convert the offered prices to U.S. currency for evaluation purposes. The contracting officer shall use the current market exchange rate from a commonly used source in effect on the

(1) Date of bid opening for sealed bid acquisitions.

(2) Closing date for negotiated acquisitions when award is based on initial offers, or

(3) Due date for receipt of best and final offers, for other negotiated acquisitions.

(c) If contracts are priced in foreign currency, agencies must ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

[61 FR 31650, June 20, 1996]

25.502 Solicitation provision.

The contracting officer shall insert the provision at 52.225–4, Evaluation of Foreign Currency Offers, in solicitations if the use of other than a specified currency is permitted. The contracting officer shall insert the source of the rate to be used in the evaluation of offers.

[61 FR 31651, June 20, 1996]

Subpart 25.6—Customs and Duties

25.600 Scope of subpart.

This subpart provides policies and procedures for exempting from import duties certain supplies purchased under Government contracts. Regulations governing importations and duties are contained in the *Customs Regulations* issued by the U.S. Customs Service, Department of the Treasury (Chapter I, Title 19 of the Code of Federal Regulations).

25.601 Definition.

Customs territory of the United States, as used in this subpart, means the States, the District of Columbia, and Puerto Rico.

25.602 Policy.

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies.